



Veterans Health Administration  
 VHA FOIA Office (105HIG)  
 810 Vermont Avenue NW  
 Washington, DC 20420

In Reply Refer To: **FOIA Request 21-06268-F**

September 12, 2022

Ryan Mulvey  
 Americans For Prosperity Foundation  
 1310 N. Courthouse Rd  
 Arlington, VA, 22201

Dear Mr. Mulvey:

This letter is the second email production in response to your May 27, 2021 request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, submitted to the Department of Veterans Affairs (VA) Veterans Health Administration (VHA) Central Office FOIA Office, requesting the following records:

1. "Records reflecting aggregate totals and percentages for pending and completed appointment wait times and related data, as previously disclosed in summary form at the Veterans Health Administration ("VHA") "Patient Access Data" portal, <https://www.va.gov/health/accessaudit.asp>. The time period for this item is March 1, 2021 to the present records that reflect the requested data on a monthly basis (e.g., total number of scheduled appointments for each month of the requested time period) or per reporting period. If month-by-month or period-by-period data is unavailable, please provide the requested data in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.
2. All records concerning the VHA's decision to eliminate proactive disclosure of patient access in nation-wide summary form, as previously available at the "Patient Access Data" portal, <https://www.va.gov/health/access-audit.asp>. The time period for this item of the request is January 1, 2021 to the present.
3. All guidance documents, legal opinions, administrative orders, directives, or policy statements issued by the VA concerning any of the following topics:
  - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
  - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
  - c. Limiting or dissuading veterans from using community care; and
  - d. The impact of the COVID-19 pandemic on administration of the VCCP.

4. All records reflecting communications between or amongst any of the following entities, offices, or components concerning any of the topics listed in Item Three: (a) VHA, (b) VA Office of the Secretary, (c) VA Office of General Counsel, (d) White House Office of Management and Budget, (e) White House Domestic Policy Council, or (f) Office of the White House Counsel.
5. All records concerning congressional requests or inquiries pertaining to any of the topics listed in Item Three. This item includes, but is not limited to, records originating with any Member or entity of Congress, formal agency responses thereto, and internal VA communications regarding the congressional request or inquiry. Searches should be conducted, at a minimum, within the VHA, VA Office of the Secretary, VA Office of General Counsel, and VA Office of Public and Intergovernmental Affairs.”

As noted in our November 19, 2021 letter, also on or around May 28, 2021; fourteen (14) VA Medical Center FOIA Offices received the following requests:

“Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), AFPP hereby requests access to the following categories of records concerning operation of the (previously indicated) VA Medical Center hospital. The time period for all items of this request is January 1, 2020 to the present. Please note: to the extent an item of this request seeks data (i.e., Items 1–7 and 9), please provide records reflecting that data on a monthly basis (e.g., total number of scheduled appointments for each month of the requested time period). If month-by-month data is unavailable, please provide the requested data in the aggregate or in the form otherwise maintained by the agency. If responsive records are kept in a CSV or Excel format, please produce the records in their native format.

1. Records reflecting the total number of appointments scheduled.
2. Records reflecting the total number of appointments completed.
3. Records reflecting the total number of appointments cancelled:
  - a. By a VA health care provider; and
  - b. By a patient.
4. Records reflecting the total number and percentage of appointments for primary care, mental health care, or non-institutional extended care services scheduled:
  - a. Within 20 days of a patient’s date of request; and
  - b. Over 20 days of a patient’s date of request.
5. Records reflecting the total number and percentage of appointments for specialty care scheduled:
  - a. Within 28 days of a patient’s date of request; and
  - b. Over 28 days of a patient’s date of request.
6. Records reflecting the total number of patients who, in consultation with a VA health care provider, agreed to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.
7. Records reflecting the total number of patients who refused to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards.

8. All records reflecting the policies and practices for documenting whether a patient agrees or refuses to schedule an appointment outside the 20-/28-day period established by the VCCP designated access standards. This item would include, for example, any blank, standardized form(s) for memorializing such patient consent.
9. Records reflecting the total number and percentage of patients:
  - a. Eligible for community care under the VCCP;
  - b. Who have elected to receive community care under the VCCP; and
  - c. Who have declined to receive community care under the VCCP.
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the (previously indicated) VA Medical Center hospital and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:
  - a. Interpretation of the VCCP regulations and designated access standards, including the agency's method for calculating wait times (e.g., discussion of the difference between "date of request," "patient preferred date," and "clinically indicated date");
  - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
  - c. Limiting or dissuading veterans from using community care; and
  - d. The impact of the COVID-19 pandemic on administration of the VCCP."

### Consolidation:

Per communication in or about September 2021, we notified you through counsel that we consolidated all of the above-mentioned FOIA requests into one tracking number, 21-06268-F (appearing at the top of this letter), for ease of use and tracking post litigation filing. Any further communication will be under FOIA tracking number 21-06268-F.

### Search Terms:

As agreed upon on in discussions and memorialized in writing (via email) around May 16, 2022, the parties agreed on the following search terms and custodians:

Search Item	Search Terms	Custodians
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<p>Search #1, <b><u>HQ</u></b> <b><u>FOIA ITEM 2</u></b></p>	<p>[(“access to care” OR “patient access”) AND (“data” OR “numbers”)]</p> <p>AND (“website” OR “site” OR “portal”)</p> <p>AND (“transfer” OR “move” OR “shift” OR “relocate” OR “create date” OR “inspector general”)</p>	<ul style="list-style-type: none"> <li>• Kirsh</li> <li>• Lieberman</li> <li>• Hudson</li> <li>• Oshinski</li> <li>• Stone</li> </ul>
<p>Search #2, <b><u>HQ</u></b> <b><u>FOIA ITEM 3a &amp; 4-5 and VAMCs</u></b> <b><u>FOIA Item 10a</u></b></p> <p><b><u>(W/O CACMI)</u></b></p>	<p>(“MISSION Act” OR “VCCP” OR “Veterans Community Care”)</p> <p>AND (“date of request” OR “request date” OR “patient preferred date” OR “create date” OR “clinically indicated date” OR “patient indicated date” OR “wait time standard” OR “access standard” OR “file entry date” OR “community care eligibility”)</p> <p>AND [(“guidance” OR “direct*” OR “policy” OR “memo*”) OR (“inquiry” OR “request” OR “question” OR “inspector general”)]</p>	<ul style="list-style-type: none"> <li>• Kirsh</li> <li>• Upton</li> <li>• Matthews</li> <li>• Boyd</li> <li>• Cunningham</li> <li>• Lieberman</li> <li>• Greenstone</li> <li>• MacDonald</li> <li>• Tucker</li> <li>• Bradsher</li> <li>• Sauber</li> <li>• Hudson</li> <li>• Blauert</li> <li>• Henson</li> <li>• Powers</li> <li>• Raftery</li> <li>• Stone</li> <li>• Clancy</li> <li>• Oshinski</li> <li>• Wilkie (x2)</li> <li>• McDonough (x2)</li> </ul>
<p>Search #3, <b><u>HQ</u></b> <b><u>FOIA ITEM 3a &amp; 4-5 and VAMCs</u></b> <b><u>FOIA Item 10a</u></b></p> <p>(w/VHACACMI)</p>	<p>(“MISSION Act” OR “VCCP” OR “Veterans Community Care”)</p> <p>AND (“date of request” OR “request date” OR “patient preferred date” OR “create date” OR “clinically indicated date” OR “patient indicated date” OR “wait time standard” OR “access standard” OR “file entry date” OR “community care eligibility”)</p> <p>AND [(“guidance” OR “direct*” OR “policy” OR “memo*”) OR (“inquiry” OR “request” OR “question” OR “inspector general”)] AND “<u>VHACACMI@va.gov</u>”</p>	<ul style="list-style-type: none"> <li>• Mary Fields</li> </ul>

<p>Search #4, <b><u>HQ</u></b>  <b><u>FOIA ITEM 3b &amp;</u></b>  <b><u>4-5 and VAMCs</u></b>  <b><u>FOIA ITEM 10b</u></b></p>	<p>(“VCCP” OR “Community Care” OR  “MISSION Act”)</p> <p>AND (“access standards” OR “wait times”)</p> <p>AND [(“method*” OR “calculat*”) AND  (“process” OR “procedure” OR “direct*”  OR “policy” OR “memo*”)]</p>	<ul style="list-style-type: none"> <li>• Upton</li> <li>• Matthews</li> <li>• Boyd</li> <li>• Cunningham</li> <li>• Lieberman</li> <li>• Greenstone</li> <li>• MacDonald</li> <li>• Tucker</li> <li>• Bradsher</li> <li>• Sauber</li> <li>• Hudson</li> <li>• Blauert</li> <li>• Powers</li> <li>• Henson</li> <li>• Raftery</li> <li>• Stone</li> <li>• Clancy</li> <li>• Oshinski</li> <li>• Wilkie (x2)</li> <li>• McDonough (x2)</li> </ul>
<p>Search #5, <b><u>HQ</u></b>  <b><u>FOIA ITEM 3c &amp;</u></b>  <b><u>4-5 and VAMCs</u></b>  <b><u>FOIA ITEM 10c</u></b></p>	<p>[(“community care wait time”) AND  (“eligible” OR “eligibility”)]</p> <p>AND</p> <p>(“script” OR “referral coordination  initiative”)</p>	<ul style="list-style-type: none"> <li>• Kirsh</li> <li>• Upton</li> <li>• Matthews</li> <li>• Boyd</li> <li>• Cunningham</li> <li>• Lieberman</li> <li>• Greenstone</li> <li>• MacDonald</li> <li>• Tucker</li> <li>• Bradsher</li> <li>• Sauber</li> <li>• Hudson</li> <li>• Blauert</li> <li>• Henson</li> <li>• Powers</li> <li>• Raftery</li> <li>• Stone</li> <li>• Clancy</li> <li>• Oshinski</li> <li>• Wilkie (x2)</li> <li>• McDonough (x2)</li> </ul>

<p>Search #6, <b><u>HQ</u></b>  <b><u>FOIA ITEM 3c &amp;</u></b>  <b><u>4-5 and VAMCs</u></b>  <b><u>FOIA ITEM 10c</u></b></p> <p><b><u>(w/VHACACMI)</u></b></p>	<p>((("community care wait time") AND ("eligible" OR "eligibility")) AND ("eligible" OR "eligibility")) AND ("script" OR "referral coordination initiative") AND "<u>vhacacmi@va.gov</u>"</p>	<ul style="list-style-type: none"> <li>• Mary Fields</li> </ul>
<p>Search #7, <b><u>HQ</u></b>  <b><u>FOIA ITEM 3d &amp;</u></b>  <b><u>4-5 and VAMCs</u></b>  <b><u>FOIA ITEM 10d</u></b></p>	<p>[(("COVID*" OR "pandemic") AND ("VCCP" OR "community care" OR "MISSION Act"))]</p> <p>AND ("referral management" OR "consult management" OR "eligibility" OR "wait time standard" OR "access standard" OR "pause")</p>	<ul style="list-style-type: none"> <li>• Kirsh</li> <li>• Matthews</li> <li>• Boyd</li> <li>• Sauber</li> <li>• Hudson</li> <li>• Hipolit</li> <li>• Blauert</li> <li>• Upton</li> <li>• Tucker</li> <li>• Bradsher</li> <li>• Powers</li> <li>• Henson</li> <li>• Raftery</li> <li>• Stone</li> <li>• Wilkie (x2)</li> <li>• McDonough (x2)</li> </ul>

#### Email Production:

This production is in response to Search #1 and #4 of your request.

#### Search #1-

"All records concerning the VHA's decision to eliminate proactive disclosure of patient access [data] in nation-wide summary form, as previously available at the "Patient Access Data" portal, <https://www.va.gov/access-audit.asp>. The time period for this item of the request is January 1, 2021 to the present." As noted above, the search terms include:

[(("access to care" OR "patient access") AND ("data" OR "numbers"))  
AND ("website" OR "site" OR "portal")  
AND ("transfer" OR "move" OR "shift" OR "relocate" OR "create date" OR "inspector general").

These search terms were applied to the following custodian mailboxes:



- Susan Kirsh
- Steven Lieberman
- Christopher Hudson
- Renee Oshinski
- Richard Stone.”

We processed four hundred and thirty-two (432) pages for this production. These 432 pages consist of multiple copies of an article from the Health Affairs Journal, Volume 40, Number 8, entitled, “Comparing Complication Rates After Elective Total Knee Arthroplasty Delivered Or Purchased By The VA.” Since this article is not public, it is maintained behind a pay wall by the Health Affairs Journal, and the Journal has not given VA permission to redistribute the article, it is VA’s position that the article is not an agency record. Furthermore, even if the article was an agency record, VA would withhold release of the article under FOIA Exemption 4, which protects trade secrets and commercial or financial information obtained from a person and privileged or confidential. You can review the abstract of the article at <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.01679>.

#### Search #4-

3. All guidance documents, legal opinions, administrative orders, directives, or policy statements issued by the VA concerning any of the following topics:
  - b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;
4. “All records reflecting communications between or amongst any of the following entities, offices, or components concerning any of the topics listed in Item Three: (a) VHA, (b) VA Office of the Secretary, (c) VA Office of General Counsel, (d) White House Office of Management and Budget, (e) White House Domestic Policy Council, or (f) Office of the White House Counsel.”
5. “All records concerning congressional requests or inquiries pertaining to any of the topics listed in item three. This item includes, but is not limited to, records originating with any Member or entity of Congress, formal agency responses thereto, and internal VA communications regarding the congressional request or inquiry. Searches should be conducted, at a minimum, within the VHA, VA Office of the Secretary, VA Office of General Counsel, and VA Office of Public and Intergovernmental Affairs.”
10. All guidance documents, legal opinions, administrative orders, directives, policy statements, or communications exchanged between the (previously indicated) VA Medical Center hospital and the Veterans Health Administration, VA Office of General Counsel, VA Office of the Secretary, White House Office of Management and Budget, or White House Domestic Policy Council concerning:

- b. The process by which the VA obtains patient consent to schedule an appointment outside the 20-/28-period established by the VCCP designated access standards;

The time period for this item of the request is January 1, 2021 to the present.

As noted above, the search terms include:

("VCCP" OR "Community Care" OR "MISSION Act") AND ("access standards" OR "wait times")

These search terms were applied to the following custodian mailboxes:

- Mark Upton
- Kameron Matthews
- Teresa Boyd
- Kristen Cunningham
- Steven Lieberman
- Clinton Greenstone
- Jennifer MacDonald
- Brooks Tucker
- Tanya Bradsher
- Richard Sauber
- William Hudson, Jr.
- Susan Blauert
- Pamela Powers
- Christopher Henson
- Meghan Raftery
- Richard Stone
- Carolyn Clancy
- Renee Oshinski
- Robert Wilkie (x2)
- Denis McDonough (x2)

We processed four thousand three hundred and fifty-two (4352) items as non-responsive for this search. Additionally, we processed one hundred and ninety-two (192) responsive pages for this search. The Bates numbers for this dataset start at number 7 and are located at the top center of the pages. There are additional numbers that appear on this dataset on the bottom right on Bates numbered pages 27-192; however, they are original to the documents.

#### Determination:

My review of the documents revealed that they contained information that falls within the disclosure protections of FOIA Exemption 6, 5 U.S.C. § 552(b)(6). FOIA



Exemption 6 permits VA to withhold a document or information contained within a document if disclosure of the information would constitute a clearly unwarranted invasion of a living individual's personal privacy. Stated another way, VA may withhold information under FOIA Exemption 6 where disclosure of the information, either by itself or in conjunction with other information available to either the public or the FOIA requester, would result in an unwarranted invasion of an individual's personal privacy without contributing significantly to the public's understanding of the activities of the federal government.

More specifically, the information I am withholding, as indicated on the enclosed documents, under FOIA Exemption 6 consists of: employee email addresses, employee names, employee titles, employee group email addresses, connection information for employee training as the individuals associated with this information have a personal privacy interest in it.

The coverage of FOIA Exemption 6 is absolute unless the FOIA requester can demonstrate a countervailing public interest in the requested information by demonstrating that the individual is in a position to provide the requested information to members of the general public and that the information requested contributes significantly to the public's understanding of the activities of the Federal government. Additionally, the requester must demonstrate how the public's need to understand the information significantly outweighs the privacy interest of the person to whom the information pertains. Upon consideration of the materials provided, I have not been able to identify a countervailing public interest of sufficient magnitude to outweigh the privacy interest in this case. The individuals associated with this information have a personal privacy interest in information that outweighs any public interest served by disclosure of their identities under FOIA. Consequently, I am denying your request for this information under FOIA Exemption 6, 5 U.S.C. § 552 (b)(6).

Thank you for your interest in VA. If you have any further questions, please feel free to contact me at (785) 230-8430 or via email at [stacy.ekis@va.gov](mailto:stacy.ekis@va.gov).

Sincerely,



Stacy Ekis  
VHA FOIA Officer

Enclosures: